

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

**Jun 30, 2016**

SEAN F. McAVOY, CLERK

**UNITED STATES DISTRICT COURT**  
**EASTERN DISTRICT OF WASHINGTON**

ZOE RAQUEL MONTEZ,

Plaintiff,

vs.

CAROLYN W. COLVIN,

Acting Commissioner of Social Security,

Defendant.

No. 2:15-CV-00177-MKD

ORDER DENYING PLAINTIFF'S  
MOTION FOR SUMMARY  
JUDGMENT AND GRANTING  
DEFENDANT'S MOTION FOR  
SUMMARY JUDGMENT

ECF Nos. 15, 17

BEFORE THE COURT are the parties' cross-motions for summary judgment. ECF Nos. 15, 17. The parties consented to proceed before a magistrate judge. ECF No. 6. The Court, having reviewed the administrative record and the parties' briefing, is fully informed. For the reasons discussed below, the Court denies Plaintiff's motion (ECF No. 15) and grants Defendant's motion (ECF No. 17).

ORDER DENYING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND  
GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT - 1

## JURISDICTION

The Court has jurisdiction over this case pursuant to 42 U.S.C. § 1383(c)(3).

## STANDARD OF REVIEW

A district court's review of a final decision of the Commissioner of Social Security is governed by 42 U.S.C. § 405(g). The scope of review under § 405(g) is limited; the Commissioner's decision will be disturbed "only if it is not supported by substantial evidence or is based on legal error." *Hill v. Astrue*, 698 F.3d 1153, 1158 (9th Cir. 2012). "Substantial evidence" means "relevant evidence that a reasonable mind might accept as adequate to support a conclusion." *Id.* at 1159 (quotation and citation omitted). Stated differently, substantial evidence equates to "more than a mere scintilla[,] but less than a preponderance." *Id.* (quotation and citation omitted). In determining whether the standard has been satisfied, a reviewing court must consider the entire record as a whole rather than searching for supporting evidence in isolation. *Id.*

In reviewing a denial of benefits, a district court may not substitute its judgment for that of the Commissioner. *Edlund v. Massanari*, 253 F.3d 1152, 1156 (9th Cir. 2001). If the evidence in the record "is susceptible to more than one rational interpretation, [the court] must uphold the ALJ's findings if they are supported by inferences reasonably drawn from the record." *Molina v. Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012). Further, a district court "may not reverse an

1 ALJ's decision on account of an error that is harmless." *Id.* An error is harmless  
2 "where it is inconsequential to the [ALJ's] ultimate nondisability determination."  
3 *Id.* at 1115 (quotation and citation omitted). The party appealing the ALJ's  
4 decision generally bears the burden of establishing that it was harmed. *Shineski v.*  
5 *Sanders*, 556 U.S. 396, 409-410 (2009).

### 6 **FIVE-STEP EVALUATION PROCESS**

7 A claimant must satisfy two conditions to be considered "disabled" within  
8 the meaning of the Social Security Act. First, the claimant must be "unable to  
9 engage in any substantial gainful activity by reason of any medically determinable  
10 physical or mental impairment which can be expected to result in death or which  
11 has lasted or can be expected to last for a continuous period of not less than twelve  
12 months." 42 U.S.C. § 1382c(a)(3)(A). Second, the claimant's impairment must be  
13 "of such severity that he is not only unable to do his previous work[, ] but cannot,  
14 considering his age, education, and work experience, engage in any other kind of  
15 substantial gainful work which exists in the national economy." 42 U.S.C. §  
16 1382c(a)(3)(B).

17 The Commissioner has established a five-step sequential analysis to  
18 determine whether a claimant satisfies the above criteria. *See* 20 C.F.R. §  
19 416.920(a)(4)(i)-(v). At step one, the Commissioner considers the claimant's work  
20 activity. 20 C.F.R. § 416.920(a)(4)(i). If the claimant is engaged in "substantial

1 gainful activity,” the Commissioner must find that the claimant is not disabled. 20  
2 C.F.R. § 416.920(b).

3 If the claimant is not engaged in substantial gainful activity, the analysis  
4 proceeds to step two. At this step, the Commissioner considers the severity of the  
5 claimant’s impairment. 20 C.F.R. § 416.920(a)(4)(ii). If the claimant suffers from  
6 “any impairment or combination of impairments which significantly limits [his or  
7 her] physical or mental ability to do basic work activities,” the analysis proceeds to  
8 step three. 20 C.F.R. § 416.920(c). If the claimant’s impairment does not satisfy  
9 this severity threshold, however, the Commissioner must find that the claimant is  
10 not disabled. 20 C.F.R. § 416.920(c).

11 At step three, the Commissioner compares the claimant’s impairment to  
12 severe impairments recognized by the Commissioner to be so severe as to preclude  
13 a person from engaging in substantial gainful activity. 20 C.F.R. §  
14 416.920(a)(4)(iii). If the impairment is as severe or more severe than one of the  
15 enumerated impairments, the Commissioner must find the claimant disabled and  
16 award benefits. 20 C.F.R. § 416.920(d).

17 If the severity of the claimant’s impairment does not meet or exceed the  
18 severity of the enumerated impairments, the Commissioner must pause to assess  
19 the claimant’s “residual functional capacity.” Residual functional capacity (RFC),  
20 defined generally as the claimant’s ability to perform physical and mental work

activities on a sustained basis despite his or her limitations, 20 C.F.R. § 416.945(a)(1), is relevant to both the fourth and fifth steps of the analysis.

At step four, the Commissioner considers whether, in view of the claimant's RFC, the claimant is capable of performing work that he or she has performed in the past (past relevant work). 20 C.F.R. § 416.920(a)(4)(iv). If the claimant is capable of performing past relevant work, the Commissioner must find that the claimant is not disabled. 20 C.F.R. § 416.920(f). If the claimant is incapable of performing such work, the analysis proceeds to step five.

At step five, the Commissioner considers whether, in view of the claimant's RFC, the claimant is capable of performing other work in the national economy. 20 C.F.R. § 416.920(a)(4)(v). In making this determination, the Commissioner must also consider vocational factors such as the claimant's age, education and past work experience. 20 C.F.R. § 416.920(a)(4)(v). If the claimant is capable of adjusting to other work, the Commissioner must find that the claimant is not disabled. 20 C.F.R. § 416.920(g)(1). If the claimant is not capable of adjusting to other work, analysis concludes with a finding that the claimant is disabled and is therefore entitled to benefits. 20 C.F.R. § 416.920(g)(1).

The claimant bears the burden of proof at steps one through four above. *Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999). If the analysis proceeds to step five, the burden shifts to the Commissioner to establish that (1) the claimant is

1 capable of performing other work; and (2) such work “exists in significant  
2 numbers in the national economy.” 20 C.F.R. § 416.920(c)(2); *Beltran v. Astrue*,  
3 700 F.3d 386, 389 (9th Cir. 2012).

#### 4 **ALJ’s FINDINGS**

5 Plaintiff applied for Title XVI supplemental security income (SSI) on  
6 August 25, 2011, alleging onset beginning April 20, 2008. Tr. 21, 151-157. The  
7 application was denied initially, Tr. 81-93, and upon reconsideration, Tr. 95-107.  
8 Plaintiff appeared for a hearing before an administrative law judge (ALJ) on  
9 October 4, 2013. Tr. 37-79. On December 6, 2013, the ALJ denied Plaintiff’s  
10 claim. Tr. 18-36.

11 At step one, the ALJ found that Plaintiff had not engaged in substantial  
12 gainful activity since August 25, 2011. Tr. 23. At step two, the ALJ found  
13 Plaintiff suffers from the following severe impairments: right knee ACL tear and  
14 mild-osteoarthritis, left-shoulder bursitis, asthma, obesity, depressive disorder,  
15 post-traumatic stress disorder, borderline-personality disorder, and substance-abuse  
16 disorder in early remission. Tr. 23. At step three, the ALJ found that Plaintiff does  
17 not have an impairment or combination of impairments that meets or medically  
18 equals a listed impairment. Tr. 24. The ALJ then concluded that the Plaintiff has  
19 the RFC to perform light work, with additional limitations. Tr. 26. At step four,  
20 the ALJ found Plaintiff cannot perform any past relevant work. Tr. 31. At step

1 five, the ALJ found that, considering Plaintiff's age, education, work experience,  
2 and RFC, there are jobs in significant numbers in the national economy that  
3 Plaintiff could perform, such as laundry folder, small parts assembler, and bottle  
4 packer/caser. Tr. 32. On that basis, the ALJ concluded that Plaintiff is not  
5 disabled as defined in the Social Security Act. Tr. 32.

6 On May 20, 2015, the Appeals Council denied review, Tr. 1-7, making the  
7 ALJ's decision the Commissioner's final decision for purposes of judicial review.  
8 *See* 42 U.S.C. § 405(g); 20 C.F.R. § 422.210.

### 9 ISSUES

10 Plaintiff seeks judicial review of the Commissioner's final decision denying  
11 her SSI under Title XVI of the Social Security Act. ECF No. 15. Plaintiff raises  
12 the following issues for this Court's review:

- 13 1. Whether the ALJ properly weighed Plaintiff's symptom claims; and
- 14 2. Whether the ALJ properly weighed the medical opinion evidence.

#### 15 A. Adverse Credibility Finding

16 Plaintiff contends the ALJ failed to provide specific findings with clear and  
17 convincing reasons for discrediting her symptom claims. ECF No. 15 at 12-16.

18 An ALJ engages in a two-step analysis to determine whether a claimant's  
19 testimony regarding subjective pain or symptoms is credible. "First, the ALJ must  
20 determine whether there is objective medical evidence of an underlying

1 impairment which could reasonably be expected to produce the pain or other  
2 symptoms alleged.” *Molina*, 674 F.3d at 1112 (internal quotation marks omitted).  
3 “The claimant is not required to show that her impairment could reasonably be  
4 expected to cause the severity of the symptom she has alleged; she need only show  
5 that it could reasonably have caused some degree of the symptom.” *Vasquez v.*  
6 *Astrue*, 572 F.3d 586, 591 (9th Cir. 2009) (internal quotation marks omitted).

7       Second, “[i]f the claimant meets the first test and there is no evidence of  
8 malingered, the ALJ can only reject the claimant’s testimony about the severity of  
9 the symptoms if [the ALJ] gives ‘specific, clear and convincing reasons’ for the  
10 rejection.” *Ghanim v. Colvin*, 763 F.3d 1154, 1163 (9th Cir. 2014). “General  
11 findings are insufficient; rather, the ALJ must identify what testimony is not  
12 credible and what evidence undermines the claimant’s complaints.” *Id.* (quoting  
13 *Lester v. Chater*, 81 F.3d 821, 834 (9th Cir. 1995)); *Thomas v. Barnhart*, 278 F.3d  
14 947, 958 (9th Cir. 2002) (“[T]he ALJ must make a credibility determination with  
15 findings sufficiently specific to permit the court to conclude that the ALJ did not  
16 arbitrarily discredit claimant’s testimony.”). “The clear and convincing [evidence]  
17 standard is the most demanding required in Social Security cases.” *Garrison v.*  
18 *Colvin*, 759 F.3d 995, 1015 (9th Cir. 2014) (quoting *Moore v. Comm’r of Soc. Sec.*  
19 *Admin.*, 278 F.3d 920, 924 (9th Cir. 2002)).



1 In making an adverse credibility determination, the ALJ may consider, *inter*  
2 *alia*, (1) the claimant's reputation for truthfulness; (2) inconsistencies in the  
3 claimant's testimony or between his testimony and his conduct; (3) the claimant's  
4 daily living activities; (4) the claimant's work record; and (5) testimony from  
5 physicians or third parties concerning the nature, severity, and effect of the  
6 claimant's condition. *Thomas*, 278 F.3d at 958-59.

7 The Court finds the ALJ provided specific, clear, and convincing reasons for  
8 finding Plaintiff's statements concerning the intensity, persistence, and limiting  
9 effects of her symptoms not "fully credible." Tr. 27.

10 *1. Objective Medical Evidence*

11 The ALJ set out, in detail, the medical evidence regarding Plaintiff's  
12 impairments, and ultimately concluded that her allegations were inconsistent with  
13 the medical evidence. Tr. 27. An ALJ may not discredit a claimant's pain  
14 testimony and deny benefits solely because the degree of pain alleged is not  
15 supported by objective medical evidence. *Rollins v. Massanari*, 261 F.3d 853, 857  
16 (9th Cir. 2001); *Bunnell v. Sullivan*, 947 F.2d 341, 346-47 (9th Cir. 1991); *Fair v.*  
17 *Bowen*, 885 F.2d 597, 601 (9th Cir. 1989). However, the medical evidence is a  
18 relevant factor in determining the severity of a claimant's pain and its disabling  
19 effects. *Rollins*, 261 F.3d at 857; 20 C.F.R. §§ 404.1529(c)(2), 416.929(c)(2); *see*  
20 *also* S.S.R. 96-7p. Minimal objective evidence is a factor which may be relied

1 upon in discrediting a claimant's testimony, although it may not be the only factor.  
2 *See Burch v. Barnhart*, 400 F.3d 676, 680 (9th Cir. 2005).

3 Plaintiff testified that her right-knee condition causes her constant pain,  
4 preventing her from standing for more than twenty minutes at a time and walking  
5 more than half a block. Tr. 58. If she sits for longer than a half hour, Plaintiff  
6 testified that her right leg goes numb. Tr. 59, 62. As a result of her right-knee  
7 condition, Plaintiff testified that she reclines on the couch most days with her right  
8 leg elevated to alleviate the pain. Tr. 59, 62-63.

9 The medical evidence does not support such severe symptoms. An MRI of  
10 Plaintiff's knee showed an old ACL tear and thinning of the articular cartilage  
11 medially. Tr. 27 (citing Tr. 216-217). Plaintiff's orthopedist, Arnold Peterson,  
12 M.D., found she had range of motion in her leg of 115 degrees, limited only by the  
13 girth of her thigh and calf. Tr. 215. Plaintiff's medial and lateral ligaments were  
14 stable; she had "excellent medial check rein, . . . no medial or lateral tenderness  
15 and really nothing to suggest patellofemoral etiology." Tr. 214. Dr. Peterson  
16 opined that Plaintiff's knee pain was not caused by the ACL tear, but "definitely a  
17 function of her weight and the degenerative changes that are occurring." Tr. 214.

18 Plaintiff cites Dr. Peterson's last statement about degenerative changes in  
19 support of her claim that medical imaging corroborates her symptoms. ECF No.  
20 15 at 12. The imaging suggests thinning of cartilage but "nothing to suggest

1 patellofemoral etiology.” Tr. 214. While Plaintiff’s knee may cause her some  
2 pain, the observations of treatment providers suggest Plaintiff’s pain is not as  
3 severe as she alleges. Plaintiff’s primary physician, Kingsley Ugorji, M.D., noted  
4 that Plaintiff wore a brace on May 14, 2012, and limped throughout the visit. Tr.  
5 277. The next day, when Plaintiff returned to the clinic because she had provided  
6 water in place of urine for a urinalysis, Plaintiff was not wearing her knee brace  
7 and “walk[ed] well . . . with no obvious pain / discomfort [sic] on her right knee.”  
8 Tr. 277. Plaintiff contends she does not wear the brace at all times because it  
9 increases the pain in her knee. ECF No. 15 at 12-13 (citing Tr. 277, 302). Taking  
10 into account Plaintiff’s explanation, the fact that she walked well and exhibited no  
11 pain or discomfort suggests her symptoms are not as severe as she alleges. The  
12 examination Kathryn Moore, PA-C, performed also calls into question the severity  
13 of Plaintiff’s symptoms. Tr. 302. During that examination, Ms. Moore observed  
14 Plaintiff dramatize her pain and, curiously, the pain changed locations throughout  
15 the exam. Tr. 303. These inconsistencies in the medical record constitute  
16 sufficient evidence from which the ALJ could conclude Plaintiff’s symptoms were  
17 not as severe as she alleged.

## 18 2. *Poor Work Record*

19 The ALJ found that Plaintiff’s poor work record also diminished her  
20 credibility. Tr. 28. Evidence of a poor work history that suggests a claimant is not

1 motivated to work is a permissible reason to discredit a claimant's testimony that  
2 she is unable to work. *Thomas*, 278 F.3d at 959. The ALJ noted that in the 15  
3 years preceding Plaintiff's application for SSI, Plaintiff's only qualifying work  
4 history was as a survey worker, a job she held for about 17 months. Tr. 31, 92.

5 Plaintiff contends the ALJ's reasoning is unclear. ECF No. 15 at 13. An  
6 ALJ's findings are sufficiently specific when they permit a reviewing court to  
7 conclude that the ALJ did not arbitrarily discredit claimant's testimony. *Thomas*,  
8 278 F.3d at 958. Here, the ALJ specifically referenced Plaintiff's "poor work  
9 record," as a reason for discrediting her. Tr. 28. As the ALJ later elaborated,  
10 Plaintiff has held a job for only 17 months in the 15 years prior to filing for SSI.  
11 Tr. 31. The ALJ's finding is sufficiently clear for this Court to review and, upon  
12 review, the Court concludes the ALJ offered a clear and convincing reason for  
13 discrediting Plaintiff.

### 14 3. *Histrionic and Dramatic Behavior*

15 The ALJ found Plaintiff's histrionic and dramatic behavior also diminished  
16 her credibility. A Plaintiff's tendency to exaggerate is a legitimate concern in  
17 determining credibility. *Tonapetyan v. Halter*, 242 F.3d 1144, 1148 (9th Cir.  
18 2001). As an example of Plaintiff's tendencies, the ALJ recited a chart note dated  
19 May 15, 2012. Tr. 28 (citing Tr. 277). On that day, Plaintiff returned to Dr.  
20 Ugorji's clinic to provide a urine sample because the previous day she provided

1 water in lieu of urine. Tr. 277. Upon returning, Plaintiff provided a diluted urine  
2 sample, which tested positive for cannabis. Tr. 277. When confronted, Plaintiff  
3 told Dr. Ugorji, “you can not stop my meds, you have to wean me off, I can not  
4 stop using cannabis, but I am in pain. I need something that works for pain. If you  
5 do not give me my meds I will go buy them on the street.” Tr. 277. Kathryn  
6 Moore, PA-C, observed similar behavior when she attempted to examine  
7 Plaintiff’s knee. Tr. 303. Ms. Moore found examining Plaintiff “difficult with  
8 [her] dramatic pain behaviors and changing areas of pain in the knee.” Tr. 303.  
9 Plaintiff’s dramatic behavior diminishes her credibility and constitutes a clear and  
10 convincing reason for discrediting her. *Tonapetyan*, 242 F.3d at 1148.

11 Plaintiff challenges the ALJ discrediting her for attempting to obtain pain  
12 relief. ECF No. 15 at 13. Contrary to her claim, the ALJ did not discredit Plaintiff  
13 for seeking relief for her pain. The ALJ discredited Plaintiff for dramatic behavior  
14 that suggested she exaggerated her symptoms to obtain pain medications. As  
15 explained above, the ALJ’s finding constitutes a clear and convincing reason for  
16 discrediting Plaintiff.

17 *4. Inconsistent Statements*

18 The ALJ found Plaintiff inconsistently reported her substance use. Tr. 28.  
19 An ALJ may employ “ordinary techniques of credibility evaluation, such as the  
20 claimant’s reputation for lying . . . and other testimony by the claimant that appears

1 less than candid” when assessing the Plaintiff’s credibility. *See Chaudhry v.*  
2 *Astrue*, 688 F.3d 661, 672 (9th Cir. 2012); *see also Thomas*, 278 F.3d at 959  
3 (“[T]he ALJ found that [the claimant] had not been a reliable historian, presenting  
4 conflicting information about her drug and alcohol usage . . . . [T]his lack of  
5 candor carries over to her description of physical pain.” (internal quotation marks  
6 omitted)).

7 For example, the chart notes from November 2011, indicated Plaintiff  
8 admitted to smoking marijuana daily but last using other drugs 12 or 15 years ago.  
9 Tr. 234. In May of 2012, Plaintiff reported last using a “street drug” two years  
10 prior. Tr. 259. Regardless of whether marijuana is considered a “street drug,”  
11 Plaintiff’s report is inconsistent with her report in November 2011. *Compare* Tr.  
12 234 *with* Tr. 259. Both reports are inconsistent with what Plaintiff told Gregory  
13 Charboneau, Ed.D., in November 2012. At that exam, Plaintiff reported quitting  
14 “all drugs seven years ago.” Tr. 282. The ALJ did not err when she found such  
15 contradictory evidence raised questions as to the reliability of Plaintiff’s symptom  
16 claims. *Thomas*, 278 F.3d at 959.

17 Plaintiff contends the ALJ may not discredit her solely for abusing  
18 substances. But the ALJ did not discredit her for abusing substances; the ALJ  
19 discredited her for making inconsistent statements about her substance abuse.  
20 Next, Plaintiff contends the record does not clearly establish any inconsistencies.

1 ECF No. 15 at 13. Plaintiff posits that the inconsistent reports of substance use  
2 may result from her medicinal use of marijuana. Ostensibly, Plaintiff believes  
3 some providers catalogued her use of marijuana as substance abuse and others did  
4 not, leading to the inconsistent record. But the chart notes the ALJ cited to and  
5 discussed above distinguish between marijuana and other drugs Plaintiff abused.  
6 *Compare* Tr. 234 with Tr. 259. Accordingly, the ALJ offered a clear and  
7 convincing reason for discrediting Plaintiff's symptom claims. Tr. 28; *Thomas*,  
8 278 F.3d at 959.

9       5.     *Medical Improvement*

10       The ALJ found that Plaintiff's symptoms improved during the period she  
11 sought treatment. Tr. 28. While "it is error to reject a claimant's testimony merely  
12 because symptoms wax and wane in the course of treatment," an ALJ may rely on  
13 examples of "broader development" of improvement when finding a claimant's  
14 testimony not credible. *Garrison*, 759 F.3d at 1017-18 ("While ALJs obviously  
15 must rely on examples to show why they do not believe that a claimant is credible,  
16 the data points they choose must in fact constitute examples of a broader  
17 development to satisfy the applicable 'clear and convincing' standard."). Here, the  
18 ALJ noted that since November 2011, Plaintiff's depression improved. Tr. 28  
19 (citing Tr. 234). In November 2011, Plaintiff reported her medication seemed to  
20 be helping. Tr. 234. In February 2012, Plaintiff reported feeling good mood-wise,

1 and was quite happy in a new relationship. Tr. 238. A year later, Plaintiff reported  
2 her depression was a one and her anxiety a two on a scale of ten, with ten being the  
3 worst. Tr. 339. In July 2013, Plaintiff again reported her depression as a one on a  
4 scale of ten. Tr. 393. During that same session Plaintiff was discharged from  
5 counseling treatment because she did not wish to work on anything else at that  
6 time. Tr. 393.

7 Plaintiff contends that she remained symptomatic. ECF No. 15 at 13. As  
8 evidence, she cites to a check mark in a chart note that indicated she was  
9 symptomatic in March of 2012. Tr. 325. But the same chart indicated Plaintiff's  
10 depression was in partial remission. Tr. 324. Regardless, the single note is an  
11 outlier in a trend demonstrating Plaintiff's improvement. Tr. 234, 238, 339, 393.  
12 Accordingly, the ALJ provided another specific, clear, and convincing reason for  
13 not fully crediting Plaintiff's symptom claims.

#### 14 6. *Daily Activities*

15 The ALJ found that Plaintiff engaged in daily activities inconsistent with her  
16 subjective complaints. Tr. 29. A claimant's reported daily activities can form the  
17 basis for an adverse credibility determination if they consist of activities that  
18 contradict the claimant's "other testimony" or if those activities are transferable to  
19 a work setting. *Orn v. Astrue*, 495 F.3d 625, 639 (9th Cir. 2007); *see also Fair v.*  
20 *Bowen*, 885 F.2d 597, 603 (9th Cir. 1989) (daily activities may be grounds for an



1 adverse credibility finding “if a claimant is able to spend a substantial part of his  
2 day engaged in pursuits involving the performance of physical functions that are  
3 transferable to a work setting.”). “While a claimant need not vegetate in a dark  
4 room in order to be eligible for benefits, the ALJ may discredit a claimant’s  
5 testimony when the claimant reports participation in everyday activities indicating  
6 capacities that are transferable to a work setting” or when activities “contradict  
7 claims of a totally debilitating impairment.” *Molina*, 674 F.3d at 1112-13 (internal  
8 quotation marks and citations omitted).

9       The ALJ determined that Plaintiff’s daily activities indicated she was  
10 capable of full-time work at semi-skilled tasks with limited social contact. Tr. 29.  
11 Plaintiff told Kathryn Moore, PA-C that she had recurrent left shoulder and neck  
12 pain, which radiated to her head. Tr. 290. She reported to another provider that an  
13 MRI showed her rotator cuff was calcified and that she had bursitis and bone spurs.  
14 Tr. 393. But Plaintiff reported enjoying cooking and preparing complex meals.  
15 Tr. 282. She reported performing household chores, including laundry, and  
16 picking up the bathroom and living room. Tr. 282. She told the Social Security  
17 Administration that she fed and watered her cats and cleaned their litter box. Tr.  
18 185. In addition, Plaintiff reported traveling by public transportation, shopping for  
19 food, and completing two, full-time quarters of college. Tr. 58, 65, 187-188. The  
20

1 ALJ concluded Plaintiff's daily activities demonstrate she is not as limited as she  
2 alleged. Tr. 29.

3 Plaintiff challenges the ALJ's finding. ECF No. 15 at 14. Regarding the  
4 meals she prepares, Plaintiff notes that the ALJ does not know what constitutes a  
5 complex meal, and fails to recognize that she enjoys preparing complex meals "as  
6 long as she does not have to stand for long periods." Tr. 282. Plaintiff admits she  
7 uses the bus, shops for food, and takes care of her pets, but contends these  
8 activities are not inconsistent with her disability. Plaintiff also admits she took two  
9 quarters of community college, but notes the classes were online and the record  
10 does not disclose how well she did in those classes.

11 Regardless of how long Plaintiff can stand, her ability to prepare complex  
12 meals, pick up around the house, and perform household chores like laundry  
13 suggest her shoulder pain is not as debilitating as she alleges. Plaintiff's  
14 completion of her online community college classes, regardless of her actual grade,  
15 her ability to use and regular use of public transportation, indicate she is not as  
16 limited in her social interactions as she alleges.

17 Moreover, even if the ALJ erred in discrediting Plaintiff based on her daily  
18 activities, the ALJ's other reasons constitute clear and convincing reasons for  
19 finding Plaintiff not entirely credible. *See Carmickle v. Comm'r of Soc. Sec.*, 533  
20 F.3d 1155, 1162-1163 (9th Cir. 2008).

~ ~ ORDER DENYING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND  
GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT - 18

**B. Medical Opinion Evidence**

Plaintiff faults the ALJ for discounting the opinions of examining physicians John Severinghaus, Ph.D., and Gregory Charboneau, Ed.D. ECF No. 15 at 17.

There are three types of physicians: “(1) those who treat the claimant (treating physicians); (2) those who examine but do not treat the claimant (examining physicians); and (3) those who neither examine nor treat the claimant but who review the claimant’s file (nonexamining or reviewing physicians).” *Holohan v. Massanari*, 246 F.3d 1195, 1201-02 (9th Cir. 2001) (brackets omitted). “Generally, a treating physician’s opinion carries more weight than an examining physician’s, and an examining physician’s opinion carries more weight than a reviewing physician’s.” *Id.* at 1202. “In addition, the regulations give more weight to opinions that are explained than to those that are not, and to the opinions of specialists concerning matters relating to their specialty over that of nonspecialists.” *Id.* (citations omitted).

If a treating or examining physician’s opinion is uncontradicted, an ALJ may reject it only by offering “clear and convincing reasons that are supported by substantial evidence.” *Bayliss v. Barnhart*, 427 F.3d 1211, 1216 (9th Cir. 2005). “However, the ALJ need not accept the opinion of any physician, including a treating physician, if that opinion is brief, conclusory and inadequately supported by clinical findings.” *Bray v. Comm’r of Soc. Sec. Admin.*, 554 F.3d 1219, 1228

1 (9th Cir. 2009) (internal quotation marks and brackets omitted). “If a treating or  
2 examining doctor’s opinion is contradicted by another doctor’s opinion, an ALJ  
3 may only reject it by providing specific and legitimate reasons that are supported  
4 by substantial evidence.” *Bayliss*, 427 F.3d at 1216 (citing *Lester*, 81 F.3d at 830-  
5 31).

6 Dr. John Robinson, Dr. Diane Fligstein, and Dr. Marian Martin contradicted  
7 the opinions of Dr. Severinghaus and Dr. Charboneau. Accordingly, the ALJ was  
8 required to offer specific and legitimate reasons supported by substantial evidence  
9 to discount their opinions.

10 *1. John Severinghaus, Ph.D.*

11 Examining physician Dr. Severinghaus assessed Plaintiff with a GAF score  
12 between 45 and 55, indicating severe to moderate functional limitations and opined  
13 that Plaintiff has moderate to marked limitations in social function, pace, and  
14 persistence. Tr. 262-63. The ALJ did not accord these opinions any significant  
15 weight. Tr. 30.

16 First, the ALJ disregarded the GAF score because it is vague and highly  
17 subjective. Tr. 30. More importantly, the ALJ noted that GAF scores take into  
18 account factors she cannot consider under the regulations, like socioeconomic  
19 considerations. Tr. 30. This is why the Commissioner has explicitly disavowed  
20 use of GAF scores as indicators of disability. 65 Fed. Reg. 50746-01, 50765

1 (August 21, 2000) (“The GAF scale . . . does not have a direct correlation to the  
2 severity requirements in our mental disorder listing.”). Moreover, the GAF scale is  
3 no longer included in the DSM–V.<sup>1</sup> The Court finds the ALJ’s reasoning specific  
4 and legitimate.

5 Second, the ALJ discounted Dr. Severinghaus’ opinion about Plaintiff’s  
6 social functioning, pace, and persistence because his opinion appeared to be unduly  
7 based on Plaintiff’s testimony. Tr. 30. A physician’s opinion may be rejected if it  
8 is based on a claimant’s subjective complaints which were properly discounted.  
9 *Tonapetyan*, 242 F.3d at 1149. Here, Dr. Severinghaus relied on Plaintiff’s  
10 discredited testimony which, the ALJ found was not supported by the longitudinal  
11 medical evidence and she properly discredited. This is a specific and legitimate  
12 reason for discounting Dr. Severinghaus’ opinion. *Id.*

13 Last, the ALJ discounted Dr. Severinghaus’ opinion because it conflicts with  
14 the evidence, including Plaintiff’s testimony that she was able to complete two

15 \_\_\_\_\_  
16 <sup>1</sup> “It was recommended that the GAF be dropped from the DSM-5 for several  
17 reasons, including its conceptual lack of clarity (i.e., including symptoms, suicide  
18 risk, and disabilities in its descriptors) and questionable psychometrics in routine  
19 practice.” DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS, 5<sup>TH</sup> Ed.  
20 at 16.

1 quarters of fulltime college coursework in 2011. Tr. 30. Such an inconsistency  
2 between a physician's opinion and a claimant's daily activities constitutes a  
3 specific and legitimate reason to discount the physician's opinion. *Morgan v.*  
4 *Comm'r of Soc. Sec. Admin.*, 169 F.3d 595, 600-02 (9th Cir. 1999).

5 Plaintiff contests the ALJ's findings, contending Dr. Severinghaus' mental  
6 status examination (MSE) corroborates his opinion. ECF No. 15 at 17. But as  
7 even Dr. Severinghaus acknowledges, "there are no indications on interview or  
8 mental status of obvious cognitive deficits." Tr. 263. The moderate to marked  
9 limitations he placed on Plaintiff's pace and persistence stem from her  
10 "perceptions of chronic pain, anxiety around others, and distrust for others." Tr.  
11 263. The MSE did not identify or evidence Plaintiff's perceptions, anxiety, or  
12 distrust for and around others. Rather, Dr. Severinghaus based that opinion on  
13 Plaintiff's testimony. A physician's opinion may be rejected if it is based on a  
14 claimant's subjective complaints which were properly discounted. *Tonapetyan*,  
15 242 F.3d at 1149; *Morgan*, 169 F.3d at 602; *Fair*, 885 F.2d at 605. As discussed  
16 above, the ALJ properly discredited Plaintiff's symptom claims. Because Dr.  
17 Severinghaus relied on that testimony, the ALJ accorded his opinion no significant  
18 weight. *Id.*; Tr. 30.

19 Moreover, Plaintiff does not contest the ALJ's finding that the longitudinal  
20 medical record contradicts Dr. Severinghaus, which serves as an additional reason

1 for which the ALJ rejected Dr. Severinghaus' opinion. *Batson v. Comm'r of Soc.*  
2 *Sec.*, 359 F.3d 1190, 1195 (9th Cir. 2004). The Court finds the ALJ offered  
3 specific and legitimate reasons supported by substantial evidence for rejecting the  
4 opinion of Dr. Severinghaus.

5 2. *Gregory Charboneau, Ed.D.*

6 Dr. Charboneau opined that Plaintiff is severely limited in her ability to  
7 perform any basic work activities and assigned Plaintiff a GAF score of 30,  
8 indicating a serious functional impairment. Tr. 283. The ALJ accorded Dr.  
9 Charboneau's opinion no weight. Tr. 30.

10 First, the ALJ discounted Dr. Charboneau's opinion because it was based  
11 entirely on Plaintiff's discredited testimony. Tr. 30. A physician's opinion may be  
12 rejected if it is based on a claimant's subjective complaints which were properly  
13 discounted. *Tonapetyan*, 242 F.3d at 1149. Because the ALJ previously found  
14 Plaintiff unreliable and her symptom claims exaggerated, this is a specific and  
15 legitimate reason for discounting Dr. Charboneau's opinion. *Tonapetyan*, 242 F.3d  
16 at 1149.

17 Second, the ALJ also discounted Dr. Charboneau's opinion because it  
18 conflicted with his own treatment notes. Tr. 30 (citing Tr. 284). A physician's  
19 opinion may be rejected if it is unsupported by the physician's treatment notes.  
20 *See Connett v. Barnhart*, 340 F.3d 871, 875 (9th Cir. 2003) (affirming ALJ's

1 rejection of physician's opinion as unsupported by physician's treatment notes).  
2 Dr. Charboneau's opinion conflicted with his own MSE, which indicated Plaintiff  
3 was fully oriented, had intact memory, and was able to follow a three-step  
4 command. Tr. 30 (citing Tr. 284). Dr. Charboneau noted that although Plaintiff  
5 had difficulty following the conversation at times, she was oriented, her remote  
6 memory was intact, she was aware of current events, was able to follow a three-  
7 step command, and exhibited good abstract thinking and judgment. Tr. 284-285.  
8 The ALJ found these observations were inconsistent with the extreme GAF score  
9 Dr. Charboneau diagnosed and the limitations he assessed. Tr. 30. This  
10 constitutes a specific and legitimate reason for discount Dr. Charboneau's opinion.  
11 *See Connett*, 340 F.3d at 875.

12 Plaintiff challenges the ALJ's findings, contending Dr. Charboneau made  
13 personal observations of her thought process and content, concentration, and  
14 insight and judgment. ECF No. 15 at 17. Those observations, Plaintiff contends,  
15 support Dr. Charboneau's opinion. The portions of the MSE to the contrary are  
16 not representative of the record as a whole, according to Plaintiff. Plaintiff's  
17 alternative interpretation of the MSE is insufficient to reverse the ALJ. "Where the  
18 evidence is susceptible to more than one rational interpretation, one of which  
19 supports the ALJ's decision, the ALJ's conclusion must be upheld. *Thomas*, 278  
20



1 F.3d at 954. The ALJ's interpretation was a rational one, to which the Court  
2 defers. *See Morgan*, 169 F.3d at 599.

3 The Court finds the ALJ offered specific and legitimate reasons supported  
4 by substantial evidence for rejecting the opinion of Dr. Charboneau.

5 **CONCLUSION**

6 The ALJ's decision is supported by substantial evidence and free of legal  
7 error.

8 **IT IS ORDERED:**

9 1. Plaintiff's Motion for Summary Judgment (ECF No. 15) is **DENIED**.

10 2. Defendant's Motion for Summary Judgment (ECF No. 17) is

11 **GRANTED.**

12 The District Court Executive is directed to file this Order, enter  
13 **JUDGMENT FOR THE DEFENDANT**, provide copies to counsel, and **CLOSE**  
14 the file.

15 DATED this Thursday, June 30, 2016.

16 s/ Mary K. Dimke

17 MARY K. DIMKE

18 UNITED STATES MAGISTRATE JUDGE